

March 28, 2014

EDWARD J. EMMONS, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

Signed and Filed: March 27, 2014



*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Bankruptcy Case  
LABORATORY SKIN CARE, INC., ) No. 13-30195DM  
Debtor. ) Chapter 11  
\_\_\_\_\_ )

MEMORANDUM DECISION ON REQUEST FOR ALLOWANCE  
OF ADMINISTRATIVE EXPENSES

On February 21, 2014, this court held a hearing on Zari Mansouri's request for payment of an administrative expense claim totaling more than \$245,000. Tracy Hope Davis, the United States Trustee ("UST"), objected to the request. Richard A. Lapping, Esq., appeared on behalf of Ms. Mansouri; Julie M. Glosson, Esq., appeared on behalf of the UST. For the reasons set forth below, the Court will approve and allow as an administrative claim under 11 U.S.C. § 503(b)(3) and (4) all of Ms. Mansouri's request, subject to her filing a supplemental declaration regarding one aspect of her request.

Ms. Mansouri's request consists of three parts: (1) a claim in the amount of \$10,187 for cash advanced by her to Debtor (the "Cash Advance Claim"); (2) a claim in the amount of \$20,000 for

1 her unpaid postpetition salary for February 2013 (the "Salary  
2 Claim"); and (3) a claim for \$215,150.00 in attorneys' fees and  
3 \$1,128.49 in attorney expenses incurred by her by Mr. Lapping in  
4 proposing and confirming a plan of reorganization in this case  
5 ("Attorney Fee Claim").

6 Ms. Mansouri's Cash Advance Claim arises from a mistaken  
7 deposit of her personal funds (\$40,000) from the sale of a boat  
8 into Debtor's account. Ms. Mansouri has filed declarations  
9 indicating that, without her knowledge, an employee incorrectly  
10 deposited her personal funds into the Debtor's Debtor-in-  
11 Possession account in February 2012, and that she spent a little  
12 more than \$34,000 of that amount on her personal expenses between  
13 February 20, 2013, and March 17, 2013. See, e.g., Declaration of  
14 Ms. Mansouri filed on August 30, 2012 at Docket 98 in her personal  
15 case (13-30617). As of March 17, 2013, \$5,187 of her personal  
16 funds remained in Debtor's account, and Ms. Mansouri seeks, and is  
17 entitled to reimbursement of that amount.

18 The court has more difficulty with Ms. Mansouri's attempt to  
19 recover the additional amount of \$5,000 which she improperly  
20 caused Debtor to pay to her former counsel (PivotPoint). In May  
21 2013, however, PivotPoint properly returned the \$5,000 to Mr.  
22 James Lowe, the chapter 11 trustee, and that amount was  
23 "recognized" in Debtor's accounting records as an advance from Ms.  
24 Mansouri. While Pivot Point may have a claim in Ms. Mansouri's  
25 case (about which the court expresses no opinion), the returned  
26 funds were plainly Ms. Mansouri's and not Debtor's. Therefore,

1 the court will permit Ms. Mansouri to recover the \$5,000.

2 The UST's objections to the Cash Advance Claim are not  
3 persuasive. Ms. Mansouri did not intend to loan the mistaken  
4 deposit her agent made and thus she did not fail to obtain an  
5 order to make a loan nor fail to make a meaningful disclosure of  
6 this situation.

7 As stated at the hearing on February 21, 2014, the court is  
8 inclined to allow the Salary Claim. That said, the court is  
9 puzzled by Ms. Mansouri's statement in her declaration opposing  
10 conversion or dismissal of her individual case (Case No. 13-30617  
11 at Docket No. 98) that as of February 11, 2013, she "was not  
12 drawing a salary from Laboratory Skin Care." The court assumes  
13 she meant that she was not being paid because funds were not  
14 available. If, however, she was "not drawing a salary at that  
15 time" because she had agreed to an adjustment or forbearance or  
16 because she would not have otherwise received that salary in the  
17 ordinary course of business, retroactive allowance of the Salary  
18 Claim would not be appropriate.

19 The court hereby directs Ms. Mansouri to file a supplemental  
20 declaration confirming that she was not "drawing a salary" because  
21 of inadequate funds or she had agreed to defer (but not waive) her  
22 salary, if either is the case. If she cannot so attest, then the  
23 Salary Claim will be disallowed.

24 The UST's complaint that this portion of Ms. Mansouri's wages  
25 were not actual or necessary is also not persuasive. Her salary  
26 level, while high, was not an issue in the case and if and when

1 Ms. Mansouri files the required declaration, that will be  
2 sufficient to resolve this matter.

3 Finally, the court will allow the Attorney Fee Claim for the  
4 fees of her counsel for successfully preparing and prosecuting a  
5 plan of reorganization in this hotly-contested case. The court  
6 finds that while Ms. Mansouri benefitted from Mr. Lapping's  
7 services, any such benefit "is outweighed by the extent of the  
8 benefit those efforts conferred on the estate," particularly when  
9 Ms. Mansouri is funding the plan in part. *Cellular 101, Inc. v.*  
10 *Channel Comm'ns, Inc. (In re Cellular 101, Inc.)*, 377 F.3d 1092,  
11 1096 (9th Cir. 2004) (affirming an a decision awarding an  
12 administrative claim under section 503(b)(3) to creditors who  
13 successfully proposed and obtained confirmation of a plan, even  
14 though the creditors there did not fund the plan). The Debtor's  
15 Plan was confirmed despite the unusual situation of a debtor not  
16 in possession and despite vigorous opposition that threatened  
17 confirmation that was resolved, in part, through the efforts of  
18 Mr. Lapping. Clearly the interests of creditors of the Debtor  
19 were well-served by this outcome. The Attorney Fee Claim is thus  
20 allowed in its entirety. Even though Mr. Lapping is not the  
21 moving party, the court directs that the Attorney Fee Claim funds  
22 be remitted directly to him.

23 Mr. Lapping should upload an order consistent with this  
24 memorandum decision allowing the Cash Advance Claim in full,  
25 allowing the Attorney Fee Claim in full and allowing the Salary  
26 Claim in full, but only if Ms. Mansouri concurrently files the

1 supplemental declaration referred to above. The order should  
2 state that the relief is being granted "for the reasons set forth  
3 in the court's Memorandum Decision on Request for Allowance Of  
4 Administrative Expenses" of this date. He should serve the  
5 proposed form of order on Ms. Glosson in accordance with B.L.R.  
6 9021-1(c).

7 \* \* \* END OF MEMORANDUM DECISION \* \* \*